87-1689

NO. A - 672

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RICHARD LAVERNE CHANDLER

Petitioner

V.

RACHEL CHANDLER
and
COMMANDER, ARMY FINANCE AND
ACCOUNTING CENTER

Respondents

PETITION FOR WRIT OF CERTIORARI AND FOR SUMMARY REVERSAL UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RICHARD LAVERNE CHANDLER
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Lubbock, Texas 79407
(806) 795-5281, EXT. 404
Petitioner Pro Se

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISTRICT COURT'S ORDER OF DISMISSAL SOLELY ON THE GROUNDS OF ABSTENTION WITHOUT REACHING ANY OF THE REMAINING JURISDICTIONAL ISSUES?

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Richard L. Chandler, petitioner herein, prays that a Writ of Certiorari issue to review judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION AND ORDER BELOW

The "per curiam" opinion of the Court of Appeals was entered November 16, 1987 (App.B), affirming the Order of Dismissal from the United States District Court (App.C). Motions for Rehearing and Rehearing En Banc were denied December 15, 1987. (App.A). Motion for extention of time to file Petition for Writ of Certiorari was granted and time to file was extended to and including April 13, 1988. (App.D).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE AND FACTS

On January 14, 1987, petitioner filed a complaint in the District Court against Rachel Chandler and Commander, Army Finance and Accounting Center (Army). Said complaint alleged that Rachel Chandler breached the terms of a property settlement agreement incorporated in a divorce judgment by filing a fraudulent application under the provisions of 10 U.S.C. 1408 and that the Army interfered with said agreement and violated 10 U.S.C. 1408.

The complaint; pleadings; briefs; and, the record show these facts:

1. Petitioner and Rachel Chandler, were married at Juarez, Chihuahua, Mexico, October 17, 1949 and divorced at El Paso, Texas, Texas, May 28, 1980.

2. An agreed property settlement was incorporated in the divorce decree.

3. The pertinent part of the property settlement agreement was an award of $450 per month, from petitioner's military retired pay, as Rachel Chandler's sole and separate property which petitioner agreed to remit to her each month if as and when he received his retired pay from the Army.

4. Petitioner complied with the terms of the property settlement until June, 1981.

5. In August, 1983, Rachel Chandler made an application to the Army for direct payment of the $450 pursuant to 10 U.S.C. 1408 (1983).

6. Pursuant 32 C.F.R. 63, the Army notified petitioner, unless action was taken to contest divorce decree, it would make direct payment to Rachel Chandler.

7. On September 29, 1983 petitioner filed a bill of review in state court contesting divorce decree per

the Army's notice.

8. Thereafter, Army notified both petitioner and Rachel Chandler that because bill of review was filed, it would escrow the $450 each month until final determination of the bill of review.

9. On October 24, 1983, Rachel Chandler filed counter-claim to bill of review seeking arrearages of $450 per month, August, 1981 - September, 1983.

10. On July 30, 1984, petitioner filed a bankruptcy petition under Chapter 7 bankruptcy, seeking to discharge debts to, among others, Rachel Chandler.

11. In September, 1984, pursuant to the automatic stay provisions of the Bankruptcy Code, the Army ceased escrowing the $450 per month and commemced paying it to petitioner.

12. On November 14, 1984, Rachel Chandler removed her counter-claim to the

bill of review from state court to the bankruptcy court by filing adversary complaint seeking same arrearages as in state divorce court.

13. On April 22, 1985, in the absence of Rachel Chandler, trial was had on her adversary complaint.

14. On April 26, 1985, bankruptcy court entered a judgment for $12,150 in arrearages plus interest at 9.15%; declared said amount nondischargeable; and ordered petitioner to pay $2,700 to the bankruptcy court clerk, said amount being payments Army paid petitioner, November, 1984 through April, 1985.

15. On May 14, 1985, Rachel Chandler submitted a certified copy of the bankruptcy court's memorandum and order to the Army requesting direct payment be made because the bankruptcy court made all findings necessary pursuant to 10 U.S.C. 1408 to authorize such payment.

16. On June 18, 1985, the Army decided to make a change of 32 C.F.R. 63 retroactive and notified petitioner that the court order directing direct payment would have to be stayed and that contesting such court order would no longer preclude direct payment to former spouse, as was done for the bill of review.

16. Thereafter, petitioner advised the Army that bankruptcy court order did include a stay, provided that order was appealed, which was done May, 1985.

17. In July, 1985, the Army began to withhold the $450 in escrow and continued such withholding through August, 1985.

18. On September 1, 1985, the Army paid all accrued funds to Rachel Chandler and thereafter made direct payment of $450 to her, pursuant to 10 U.S.C. 1408.

19. Thereafter, pursuant to 32 C.F.R. 63, petitioner requested Army to

answer interrogatories and to reconsider decision to make direct payment all of which was refused.

20. On January 14, 1987, petitioner filed the complaint which forms the basis of this appeal.

In response to such complaint the Army filed motion for summary judgment and Rachel Chandler filed motion to abate on March 25, 1987, and cited as grounds for abatement the bill of review

21. On March 27, 1987, Rachel Chandler, filed motion for abatement in the state court citing petitioner's complaint herein as grounds for that motion.

22. The District Court construed Rachel Chandler's motion to abate and the Army's motion for summary judgment as a consolidated motion to dismiss.

23. On April 10, 1987, the District Court rendered its order of dismissal

from which this appeal arises.

24. On November 16, 1987, the Court of Appeals affirmed the District Court's order of dismissal on abstention grounds.

26. On December 15, 1987 the Court of Appeals denied petitioner's motion for rehearing and motion for rehearing en banc.

27. On March 4, 1988, this Court extended the time for filing petition for writ of certiorari up to and including April 13, 1988.

REASONS FOR GRANTING CERTIORARI

Writ of Certiorari should be granted for these reasons:

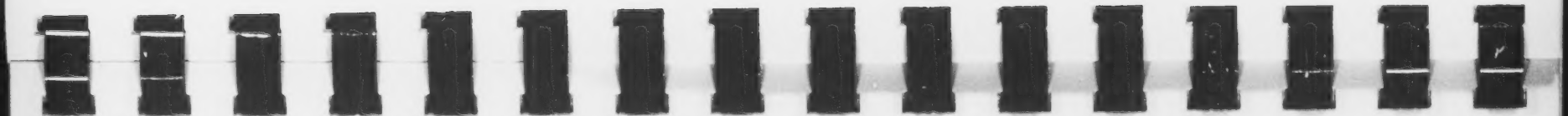
1. To review the Fifth Circuit's decision which represents a substantial departure from this Court's decisions in Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed. 483 (1976).

Petitioner has read and reread the

District Court's Order of Dismissal (App. C) and fails to find the word **abstention** anywhere in the document. The order states four reasons for ordering a dismissal and the closest reason for abstention is the court's noting that the "plaintiff has previously filed in the state court a Bill of Review of the divorce action in the state court, which is apparently still pending." The arguement presented for defendants, by the Fifth Circuit, seems to be that the case at bar falls within the domestic relations exception because a pending state action exists, namely, the bill of review. Absent exceptional circumstances, however, the fact that a state action is pending is not a reason for a federal court to decline to exercise jurisdiction which is otherwise proper. **Harris v. Pernsley**, 755 F.2d 338, 345 (3d Cir. 1985).

Also petitioner suggests that the Court of Appeals disregards this Court's holding in Colorado at 424 U.S. 813, which states that "abstention from the exercise of federal jurisdiction is the exception, not the rule" and that federal courts have "the virtually unflagging obligation . . . to exercise the jurisdiction given them".

In McIntyre v. McIntyre, 771 F.2d 1316 (1985), at 1319, the Ninth Circuit indicates that the Supreme Court has confined the circumstance appropriate for abstention to three general categories of cases. The applicable category, to the case at bar, is that category of case that presents a federal constitional issue that might be affected by a state court determination of pertinent state law, citing Railroad Commission v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971(1941. Further reference to



McIntyre, indicates that the above precedent recognizes a general abstention doctrine applicable to diversity cases that, although outside the narrow jurisdictional exception, raise domestic relations issues. Citing **Fern v. Turman**, 736 F.2d 1367, 1369-70 (9th Cir. 1984), cert. denied, ____ U.S.____, 105 S.Ct. 1177, 84 L.Ed.2d 326 (1985); **Peterson v. Babbitt**, 708 F.2d 465, 466 (9th Cir.1983)(per curiam). **McIntyre**, goes on to say that "Both **Fern** and **Peterson** involved pending state court proceedings that arguably provided a proper basis for abstention under the rule of **Pullman**.

However, petitioner contends that the analysis cannot end here without considering the basis for the state court action in the first place and what federal constitutional issue might be affected by a state court determination

of pertinent state law. As the Fifth Circuit correctly noted in its opinion, that the Army "notified Mr. Chandler that unless he took action to contest the divorce decree, it would make the direct payments sought by Rachel Chandler." The Army was, at that time, complying with the proposed rules the were promulgated in 32 C.F.R 63.6(f)(3)(iii) which stated:

> (f) Notification of Member. --
>
> (3) . . . the designated agent will . . . deny the order whenever it is shown that:
>
> (iii) The member objects to the validity of the court order and submits evidence that legal action has commenced to contest that court order. In such cases, the order will be treated as conflicting order and the amount involved will be retained pending resolution by the court that has jurisdiction.

(See Federal Register, Vol. 48, No. 20, January 28, 1983, at 4006). The "court order" referred to above is defined in 10 U.S.C. 1408(2), as "a final decree of divorce" . . . "or approved property

settlement incident to such a decree". It should come as no great surprise that any action brought under 10 U.S.C. 1408, will in some manner, involve a divorce decree. And, it makes no judicial sense to consider reference to a state court divorce decree as grounds for a federal court to refuse all jurisdiction on abstention grounds, as was done in the instant case. In the Fifth Circuit's Opinion, at page ___, the Court states that: "The court dismissed the action for a number of reasons, including lack of subject matter jurisdiction and abstention based on the fact that a bill of review was pending in state court on Mr. Chandler's claim that the property settlement was void. We do not reach the question of subject matter jurisdiction because we affirm the court's judgment on abstention grounds."

Clearly, petitioner is the victim of a

judicial "catch 22" created by the Fifth Circuit and allows the District Court to disregard the holdings of this Court in **Colorado River** that "abstention from the exercise of federal jurisdiction is the exception, not the rule." and that federal courts have "the virtually unflagging obligation . . . to exercise the jurisdiction given them". All petitioner did was comply with 32 CFR 63.6(f)(3)(iii) and 10 U.S.C. 1408(a)(2), only to find that such compliance was the very grounds for abstention on which the Court of Appeals affirmed the District Court's Order of Dismissal. The Fifth Circuit erred in its statement that: "The heart of Mr. Chandler's complaint concerns the validity of the settlement agreement. His constitutional claims against the federal defendant" (Army) "for alleged violation of 10 U.S.C. 1408 are peripheral to this

domestic relations claim." Such characterization is off the mark, because the heart of the complaint is Rachel Chandler's application which was made pursuant to 32 C.F.R. 63.6(b). Basically the application has nothing to do with the settlement agreement, nor, is it affected by any state law that would allow abstention under Pullman. Rachel Chandler's application was submitted to the Army on a standard form as provided for in 63.6(b)(1); a copy of a court order (divorce decree) 63.6(b)(1)(ii); a certification of finality 63.6(b)(1)(iii); and, a copy of what was purported to be, petitioner and Rachel Chandler's 1949 foriegn marriage record 63.6(b)(2). Rachel Chandler was attempting to show that she met the provisions of 63.6(a)(2). The complaint also alleged denial of due process because the Army refused to answer

interrogatories under, 32 C.F.R. 63.6(g)(2), or a request for reconsideration under, 32 C.F.R. 63.6(i), when requested to do so.

Petitioner contends that none of the constitutional claims are peripheral to his claim. On the contrary, if anything is "peripheral" it is the domestic relations aspect of this case, or, for that matter, any case under 10 U.S.C. 1408, because that is the nature of the statute, it deals with the relationship between former spouses and the division of retired pay upon divorce.

2. To review the Fifth Circuit's decision, which is in substantial conflict with its own decisions.

In the Fifth Circuit's Opinion, at page __ , the Court held that: "Federal courts have traditionally abstained from domestic relations cases because of strong state interest and competence in

the issues presented by such cases, and the Fifth Circuit is no exception". Citing Goins v. Goins, 777 F.2d 1059 (5th Cir. 1985); Crouch v. Crouch, 566 F.2d 486 (5th Cir. 1985).

A casual reading of Goins and Crouch clearly show that each is a diversity action and in that sense they are distinguishable from the case at bar. But, if the diversity issue is taken out of the picture and just the domestic relations aspect is examined, it can be seen that the two cases cited support different propositions. Goins at 1061 citing Bennett v. Bennett, 682 F.2d 1039, 1042 (D.C.Cir.1982)("a federal court will not . . . grant a divorce, determine alimony or support obligations, or resolve parental conflicts over custody of their childern"). The Court further held that: "A federal court may abstain from hearing such a case even if the case

also involves ordinary tort or contract claims. The inquiry that determines whether the court may abstain is "whether hearing the (tort or contract) claim will necessitate the court's involvement in domestic issues, i.e., whether it will require inquiry into the marital or parent-child relationship." In Goins the tort or contract claims of Eleanor Coins were either directly covered by the dcmestic relations controversy then pending in the Mississippi Chancery Court or were so immeshed in that controversy as to be within the bounds of the domestic relations exception to the exercise of the federal district court's diversity jurisdiction. Id. at 1063. But, contrast Goins with Crouch and the outcome is quite different and more in keeping with the essential facts in the case at bar. In Crouch, a former wife sued her former husband for breach of a

voluntary separation agreement. Id. at 487. The Fifth Circuit affirmed the district court's exercise of jurisdiction because the case presented "no questions of custody or parental rights, no pending state court action or agreement to litigate in state court, . . ." and no "strong state interest in the adjudication of this suit or any special competence on the part of the state courts." Id. at 487-88. Emphasis added regarding no pending state court action because the case at bar did have a bill of review pending at the time of the District Court's Order of Dismissal. However, petitioner contends that the pending state court action must be an action which involves issues that would deny a federal court diversity jurisdiction such as granting a divorce,

determining alimony or support obligations, or resolving parental conflicts over custody of their children. Jagiella at 565 and citations therein cited. The bill of review, in the case at bar, was not such a pending case, it was an action taken pursuant to 32 C.F.R. 63.6(f)(3)(iii).

In Rowell v. Oesterle, 626 F.2d 437 (5th Cir. 1980), the Fifth Circuit addressed the issue of whether there were sufficient domestic relations issues present to warrant abstention and the Court held that abstention in cases involving domestic relations was a general rule and the "general rule, however, has not operated to bar federal review of constitutional issues, simply because those issues arise in "domestic" contexts." Citations omitted. In that regard in Crouch, Id. the District Court found that the so-called domestic

relations exception to diversity jurisdiction was inapplicable to that case because it involved little more than a private contract to pay money between persons long since divorced which is not unlike the case at bar. The Fifth Circuit arrived at a similar decision in Jagiella v. Jagiella, 647 F.2d 561 (5th Cir. 1981). Petitioner contends that the case at bar is factually closer to Crouch than Goins and that the lower courts abused descretion and failed in their obligation to exercise the jurisdiction given them, as mandated in this Court's decision in Colorado River.

Further the bill of review attacks the settlement agreement incorporated in the divorce decree, which under Texas law is treated as a contract. McGoodwin v McGoodwin (1984, Tex) 671 SW2d 880, reh overruled. The District Court's declining jurisdiction because of the pending bill

of review which may have presented some peripheral domestic relations contract issue does not present a picture of a federal court demonstrating the virtually unflagging obligation to exercise the jurisdiction given it as mandated in Colorado River.

3. To review the Fifth Circuit's decision which is in substantial conflict with decisions of the other appellate Courts.

The conflict in decisions can be seen by examining such decisions as:

(a) McIntyre v. McIntyre, 771 F.2d 1316 (9th Cir. 1985), wherein the Court examined the question of whether a federal court has jurisdiction of a tort action between former spouses involving allegations of interference with the noncustodial father's visitation rights with his minor daughter. Id. at 1317. The McIntyre Court, after extensive

examination of decisions of other Circuit Courts, found that the District Court's abstention was inconsistent with the rationale and the holdings of cases in other circuits that have refused to apply the domestic relations exception in analogous situtions to **McIntyre**, which have been cited at 1319. **McIntyre** examined cases, of other circuits, which sounded in tort just as the case at bar sounds in tort.

(b) Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980) which involved claims involving, among other things, malicious prosecution, abuse of process, arson, and conversion to which the appellate Court held, most significantly, that: "Not all family feuds, however, fall directly into the specialized category of true domestic relations cases (primarily divorce, alimony, child custody and support). A district court may not simply avoid all

diversity cases having intrafamily aspects. Rather it must consider the exact nature of the rights asserted or of breaches alleged."

(c) Kirby v. Mellenger, 830 F.2d 176 (11th Cir. 1987) is case involving military retired pay and 10 U.S.C. 1408. The district court dismissed on husband's motion that federal courts are precluded from litigating domestic relations matters and former wife appealed. The Eleventh Circuit concluded that "core" domestic relations issues (divorce and child custody) were only tangentially present, and that there were no convincing policy reasons to support abstention.

(d) A number of Third Circuit decisions were examined in Dion v. Dion, 652 F.Supp. 1151 (E.D. Pa. 1987) which is a case that is factually similar to the case at bar. Dion was a case involving a

separation agreement for support which was not merged into a divorce decree, which under Pennsylvania law is a contractual obligation which is independant of support obligation under domestic law. However, contrast Pennsylvania law with Texas law which construes a property settlement agreement incorporated in a divorce decree under the law of contracts. McGoodwin, supra. Dion was construed to be, quite simply, an action on the contract which did not fall within the domestic relations exception to jurisdiction, such decision being arrived at under the circumstances in Solomon v. Solomon, 516 F.2d 1018 (3d Cir. 1975) and the functional considerations expressed in DiRuggiero v. Rodgers, 743 F.2d 1009 (3d Cir.d 1984). The Dion Court concluded that it did not need to have expertise in domestic relations cases in order to resolve

purely contractual disputes arising from a separation agreement like the one in that case.

4. The Fifth Circuit's judgment erred in its interpretation of another Circuit's decision to the prejudice of petitioner and, in the interest of justice, said judgment should be corrected by this Court.

In the case at bar the Fifth Circuit misapprehends the holding in Fern v. Turman, 736 F.2d 1367, 1369 (9th Cir. 1984), as being applicable to the Army. Petitioner presents the following excerpts from Fern to show that its holdings do not apply to the facts in this case.

"The district court may well have had federal question jurisdiction over appellant' claims against the Secretaries of the Army and Air Force. * * *" Id. at 1369.

"In view of our holding that appellants must pursue their claims in state court,

appellants' claims against the Secretaries of the Army and Air Force are not ripe for resolution. Ripeness has " a twofold aspect, . . . the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" Id. at 1369. Citations omitted.

"State court proceedings are ongoing. Until these proceedings are completed and it has been determined that appellants must relinquish a portion of their retired pay, a decision by this court on the claims against the federal defendants would be premature." Id. at 1369. Citations omitted.

In the case at bar, petitioner has met the "ripeness" criteria setforth in Fern. This is further confirmed by the holding in Fern which states that that Court reached "the same conclusion regarding appellants' arguement that the garnishment provision of the FSPA, 10 U.S.C. 1408(d)(5), under which the Secretary may remit retired pay directly to former spouses, provides the court with jurisdiction. The claim that this provision is contrary to the requirements of McCarty v. McCarty, 101 S.Ct. 2728,

453 U.S.210, 69 L.Ed.2d 589, is not ripe for adjudication until a garnishment order is served upon the Secretary."

As the record shows the Secretary, in the case at bar, has been served with an application for direct payment and that application is the heart of petitioner's federal question claim. Also the Army is paying Rachel Chandler $450 each month from petitioner's retired pay.

Petitioner would note that the Fifth Circuit knew full well that when it affirmed on abstention grounds it was ordering petitioner to repair to the state court that had dismissed the Bill of Review on June 5, 1987, and it was not possible for petitioner to file his federal preemption claims as contemplated in **Fern** at 1388-69.

CONCLUSION

There has been no due process in this case and abstention, by a federal

court which had jurisdiction over a federal question case, in which domestic relations are only tangentially implicated is a clear abuse of discretion. For the above reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

RICHARD L. CHANDLER
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LUBBOCK, TEXAS 79407
(806) 795-5281, EXT. 404

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing petition for writ of certiorari to Weldon S. Copeland, attorney for Rachel Chandler, at P.O. Box 1737, Plano, Texas, 75086 and Nancy Koenig, Assistant United States Attorney, attorney for the United States Army, at Room 200, 1205 Texas Avenue, Lubbock, Texas 79401, on April 12, 1988.

Richard L. Chandler

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RICHARD L. CHANDLER,
Plaintiff-Appellant,

versus

RACHEL CHANDLER and
COMMANDER, Army Finance and
Accounting Center,
Defendants-Appellees.

Appeal from the United States District
Court for Northern District of Texas

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion November 16, 1987, 5Cir., 198_, _____F.2d _____)

(December 15, 1987)

Before REAVEY, RANDALL and JOLLY,
Circuit Judges.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the

Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT: CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

/s/ Thomas M Reavley

United States Circuit Judge

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-1430
Summary Calendar

RICHARD L. CHANDLER,
Plaintiff-Appellant,

versus

RACHEL CHANDLER and COMMANDER
Army Finance and Accounting Center,
Defendants-Appellees.

Appeal from the United States District
for the Northern District of Texas
(CA-5-87-10)

(November 16, 1987)

Before REAVLEY, RANDALL and JOLLY, Circuit Judges.

The district court dismissed Richard

PER CURIAM: *

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely dicide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Chandler's suit against Rachel Chandler and the Army Finance and Accounting Center for lack of subject matter jurisdiction and because of a pending state court action. We affirm.

Richard and Rachel Chandler were married in 1949, and divorced on May 28, 1980. The divorce decree, rendered by a Texas district court, incorporated a property settlement agreement which required Mr. Chandler to pay Rachel Chandler the sum of $450 from his military retirement pay each month. Mr. Chandler complied with this obligation until June, 1981, when he claims to have discovered that Rachel Chandler had a prior undissolved marriage when she married him in 1949.

In August, 1983, Rachel Chandler made an application to the Army Finance and Accounting Center (the "federal defendant") for direct payment of the

retirement pay pursuant to 10 U.S.C. 1408 (1983). The federal defendant notified Mr. Chandler that unless he took action to contest the divorce decree, it would make direct payments sought by Rachel Chandler. After Mr. Chandler filed a bill of review in the state court contesting the property settlement on the ground that the alleged prior undissolved marriage invalidated Rachel Chandler's marriage to him, thereby voiding the divorce decree, the federal defendant notified both parties that the disputed retirement pay would be held in escrow until final determination of the bill of review.

In July 1984, Mr. Chandler filed a bankruptcy petition under Chapter 7, 11 U.S.C. 701 et seq. (1978), seeking to discharge debts to, among others, Rachel Chandler. By an order dated April 26, 1985, the retirement pay was held non-

dischargeable by the bankruptcy court. After receiving a certified copy of this order from Rachel Chandler on June 18 and notifying Mr. Chandler that it would release all accrued funds to Rachel Chandler unless a stayof execution was received within sixty days, the federal defendant on September 1, 1985 paid $6,300 to Rachel Chandler, which it had held in escrow, and began making the direct payments of $450 per month.

In January 1987 Mr. Chandler filed this action against Rachel Chandler and the federal defendant alleging that Rachel Chandler's application to the federal defendant was fraudulent due to the fact that her prior undissolved marriage invalidated the divorce decree and that his Fifth Amendment due process and equal protection rights were violated by the federal defendant's payment of his retirement pay to Rachel Chandler. The

district court construed the federal defendant's motion for summary judgment and Rachel Chandler's motion to abate the proceeding as a consolidated motion to dismiss because the court believed that an order on the defendant's motions could be construed as an adjudication on the merits and thus improperly influance other pending actions. The court dismissed the action for a number of reasons, including lack of subject matter jurisdiction and abstention based on the fact that a bill of review was pending in state court on Mr. Chandler's claim that the property settlement was void. We do not reach the question of subject matter jurisdiction because we affirm the court's judgment on abstention grounds.

The heart of Mr. Chandler's complaint concerns the validity of the settlement agreement. His constitutional claims against the federal defendant for

alleged violation of 10 U.S.C. 1408 are peripheral to this domestic relations claim. Federal courts have traditionally abstained from domestic relations cases because of strong state interest and competence in the issues presented by such cases, and the Fifth Circuit is no exception. See Goins v. Goins, 777 F.2d 1059, 1061 (5th Cir. 1985); Crouch v. Crouch, 566 F.2d 486, 487 (5th Cir. 1978). Furthermore, it is the state court's judgment that Chandler should attack, and it is properly attacked by the bill of review in that court.

The district court properly abstained from exercising jurisdiction. Until disposition of the bill of review in the state court proceeding, a decision by this court on the claims against federal defendant would be premature. See Fern v. Turman, 736 F.2d 1367, 1369 (9th Cir. 1984). The judgment of the district court is therefore AFFIRMED.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

RICHARD L. CHANDLER, Plaintiff,	CIVIL ACTION CA-5-87-10
V.	
RACHEL CHANDLER and COMMANDER, ARMY FINANCE AND ACCOUNTING CENTER, Defendants	U.S. District Court Northern District of Texas F I L E D APR 10 1987 Nancy Doherty Clerk

ORDER OF DISMISSAL

Plaintiff has filed his complaint in this court alleging that a previous decree of divorce entered by the 41st Judicial District Court of El Paso Cournty, Texas, in Cause No. 77-1540 is void because of allegations of fraud allegedly perpetrated by the defendant in securing her divorce from plaintiff. Basically, the plaintiff is attempting to set aside this divorce decree so that payments being made from his Army pension fund to the former Mrs. Chandler may be

terminated and for recovery of payments previously made, which he alleges to be wrongful payments because of the alleged fraud.

The defendant, Rachel Chandler, has filed a motion to abate the trial of this case, and the defendant, Commander, Army Finance and Accounting Center, has filed a motion for summary judgment may be an adjudication of the merits of the controversy, and the court notes that there are other pending actions which should not be influenced by this order. Therefore, the court will construe each motion by the defendants to be a motion to dismiss.

The reasons for ordering dismissal of the action in this court are as follows:

1. There is no diversity jurisdiction that exist as both the plaintiff and his former wife are

residents and citizens of the State of Texas according to the pleadings herein.

2. The court notes that plaintiff has previously filed in the state court a Bill of Review of the divorce action in the state court, which apparently is still pending.

3. The plaintiff has not alleged any specific violation of his constitutional rights.

4. Heretofore in Cause No. CA-5-85-120 in this court, which was an appeal from Bankruptcy Cause No. 584-50184 and Adversary No. 584-5105, the court affirmed the bankruptcy rulings that the moneys claimed by defendant in this divorce settlement were non-dischargable in the bankruptcy proceeding, and this order was affirmed by the United States Court of Appeals for the Fifth Circuit in Causes Nos. 85-1764 and 86-1178, dated December 9, 1986.

Accordingly, the plaintiff's complaint in this case, Cause No. CA-5-87-10, is dismissed. However, this dismissal will not be an adjudication on the merits involved in the other proceedings involving the same parties and the same subject matter, but this court can find no jurisdiction for the complaint to be filed in the United States District Court, and accordingly the complaint in this case is hereby dismissed with prejudice to the right of plaintiff to refile same in a United States District Court.

Costs are assessed as against the plaintiff.

The Clerk will furnish a copy hereof to the plaintiff who is proceeding pro se and to each attorney of record.

ENTERED this 10th day of April, 1987.

/s/ Halbert O. Woodward

Senior United States District Judge

APPENDIX D

SUPREME COURT OF THE UNITED STATES

NO. A-672

RICHARD L. CHANDLER,

Applicant,

V.

RACHEL CHANDLER AND COMMANDER,
ARMY FINANCE AND ACCOUNTING CENTER

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of the applicant,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 13, 1988.

/s/ Byron R. White

Associate Justice of the
Supreme Court of the United States

Dated this 4th

day of March, 1988.